

Label: "Reinitiation of Section 7 Consultation/OSMRE-2019-00014"

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Conversation Contents

Update on ESA Consultation

Attachments:

/2. Update on ESA Consultation/1.1 OSMRE Section 7 Consultation and MOU Update - 11-22-17.docx

"Payne, Harry" <hpayne@osmre.gov>

From: "Payne, Harry" <hpayne@osmre.gov>
Sent: Wed Nov 22 2017 10:26:50 GMT-0700 (MST)
To: Glenda Owens <gowens@osmre.gov>
CC: Sterling Rideout <srideout@osmre.gov>
Subject: Update on ESA Consultation
Attachments: OSMRE Section 7 Consultation and MOU Update - 11-22-17.docx

Glenda I am attaching an update on the document I gave you previously concerning the status of our Section 7 consultation and the MOU (Updates are in bold). The BA has been revised to address the most recent solicitor comments; the MOU, including (b)(5)-Deliberative Process, has been revised to address IMCC comments, and finally responses to the IMCC comments have been drafted by OSMRE and the Service. All of these documents will be available for distribution to DOI management and SOL management on December 4th. I propose to use the attached document as the basis for a briefing paper from you to Kate when we transmit all of these documents, which I assume may go through DTS. (This will likely require both OSMRE and the Service to initiate a surname process in order to get final DOI approval to share with the IMCC.) Let me know when you want to meet next week to discuss our path forward, Harry

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Date: December 1, 2017

Subject: Reinitiation of Endangered Species Act Section 7 Consultation

Background: On April 13, 2017, the Office of Surface Mining and Enforcement (OSMRE) requested reinitiation of formal programmatic consultation with the U.S. Fish and Wildlife Service (Service), on OSMRE's implementation of Title V of the Surface Mining Control and Reclamation Act (SMCRA). During this reinitiated consultation, OSMRE is relying upon the 1996 Biological Opinion and Conference Report (1996 BiOp) because the 2016 Biological Opinion that accompanied the SPR is no longer in effect.

In addition, OSMRE and the Service are (b)(5)-Deliberative Process

Consultation Status: OSMRE and the Service have established teams for completing consultation, including representatives from OSMRE management, OSMRE program staff, and the Office of the Solicitor (SOL). The OSMRE team completed an initial draft of the biological assessment (BA) and distributed the draft BA to the SOL for review. The OSMRE BA team completed revisions to address all SOL comments and distributed the draft for follow-up review.

The solicitors reviewed the revised BA and returned it to OSMRE on October 26, 2017. OSMRE has addressed these additional solicitor comments as of November 22, 2017 and plans to circulate the draft BA within the Department for review and any necessary revisions before being approved for release to the IMCC member states for review and comment. Copies of all material referenced in the draft BA have been uploaded to Google Docs and will also be provided to the States concurrent with the draft BA.

The final BA will be provided to the Service for its use in drafting a programmatic Biological Opinion (BiOp).

OSMRE and the Service met with IMCC member states in St. Louis on July 19, 2017, to discuss the Section 7 programmatic consultation process and the draft MOU. During that meeting, and on a subsequent call on July 26, the State RAs expressed several concerns and objections to the need for a new Section 7 consultation on Title V of SMCRA. Those concerns were further elaborated in an August 14, 2017, letter sent to the Deputy Assistant Secretary for Land and Minerals Management.

OSMRE has provided ASLM with a draft response to the IMCC letter, which is being reviewed within the Department.

(b)(5)-Deliberative Process

(b)(5)-Deliberative Process

[REDACTED]

[REDACTED] In addition we have completed a draft of our responses to the IMCC comments on the MOU, which will be provided with the revised MOU to management for further review. Upon approval by the Department, the draft MOU, in addition to the draft BA, will be provided to the IMCC member states for further review and comment.